

Mr. Richard Long's CASE.

Ann Long, Widow, Plaintiff. } *Charles Reeve*, Lessee of the
} said *Rich. Long*, Defendant.

John Long Esq; a Barrister at Law, being seized in Fee of the Lands in question, lying at *Melksham* in *Wilts.* by his Will, dated the 20th of *July*, 1676. devised the same to his Nephew *Henry Long*, (the eldest Son of his Brother *Richard Long*) for his Life; and after his Decease, to the first Son of the said *Henry Long* lawfully begotten, and the Heirs Males of the Body of such first Son lawfully issuing; and for default of such Issue, to the second, third, fourth, fifth, sixth, seventh, and every other Son of the Body of the said *Henry Long* lawfully to be begotten, successively one after another, and to the Heirs Males of their Bodies respectively; and for default of such Issue, to *Richard Long* (the Lessor of the Defendant *Reeve*) second Son of his said Brother *Richard Long*, for his Life; and after his Decease, to the first, and so to all other the Sons of the Body of the said *Richard Long* (the Lessor,) and the Heirs Male of their Bodies successively (as before); and for default of such Issue, to several other persons his Nephews and their Sons, and the Heirs Male of their Bodies successively; and for default of such Issue-Male, then to his own right Heirs; and soon afterwards dyed. *Henry Long*, the first Devisee, after *John Long's* death entred on the Lands in question, and afterwards, in *September*, 1684. married the said *Ann Long*, Plaintiff in the Writ of Error; and in 1687. dyed without Issue-Male of his body then born, but left his Wife with-child of a Son; and before such Son was born, *Richard Long* (the Lessor) entred on the Premises; and afterwards the Son of *Henry* was born, and entred on the said *Richard Long*, who thereupon brought the Ejectment, and the Fact being found specially, it was adjudged by the unanimous Opinion of the Judges of the *Common-Pleas* for the Title of *Richard Long* (the Lessor of *Reeve*) against the Title of the Son of *Henry Long*, born after his death; which Judgment was also affirmed in the *Kings-Bench* by the unanimous Opinion of the Judges there.

The Reasons for the Judgment.

- I. For that the Estate limited to the first Son of *Henry Long* was a Contingent Remainder, and by the Rule of Law must vest in some person, before the Determination, or at the time of the Determination of the precedent Estate, or else would then be absolutely void, for want of a precedent Estate to support it; and can never after vest: Therefore the Estate for Life, which *Henry* had, determining by his Death, the Remainder, limited to his first Son, (he having no Son then born) was utterly destroyed; and the Estate, limited to *Richard Long*, upon *Henry's* Death was immediately vested in him; and no Estate can accrew to the Son of *Henry*, born after his Death, and so out of time; but he is totally excluded.
- II. For that to construe, That the Estate limited to the first Son of *Henry* was not a contingent Remainder, but an Executory Devise, as the Council for the Plaintiff in the Writ of Error insisted, would be to create and introduce a perpetuity, which cannot be made but by Act of Parliament; and thereby the force of a Common Recovery, one of the principal Assurances of the Kingdom, will be cluded, and many Inconveniencies will thereby ensue.

Note. The Rule on which this Case was adjudged has been always held as certain as any one matter in the Law, there never having been any one Judgment to the contrary; and a contrary Judgment will be a breach of a fundamental Point in Law; and 'twill be a Precedent for other Cases, and of infinite consequence and mischief to a multitude of persons whose Titles depend on the same Point, and under which they have purchased and do hold, as under the security of the most certain Rule in the Law; and many Settlements of great Estates will thereby be overturn'd, and Families ruin'd.

Note. The after-born Son (without the Lands in question) has an Estate of about 80 *l. per An.* from the Testator, and hath also about 150 *l. per An.* Paternal Estate.